



Funds and Private Equity

Jersey opens doors to Private Placement Funds



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Summary

The Jersey Financial Services Commission has adopted a new policy setting out a fast track, self-certification procedure for authorising a "Private Placement Fund", being a fund:

- which is either established in Jersey or managed in Jersey
- which is closed ended
- whose units are offered to not more than fifty investors
- which only admits "sophisticated investors" or professional investors" (see appendix)

Fast track approval process

If a fund meets the above criteria, the JFSC will use its best endeavours to issue a consent to a Private Placement Fund within three working days of receipt of an application. In considering the application, the JFSC will not apply its "promoter policy" test to the fund's promoter; instead, it will rely solely on a written statement from the fund's promoter (countersigned as described below) confirming both it and its "principal persons" (ie persons with material ownership, voting or managerial influence over the promoter):

- have not had any disciplinary sanction imposed on it in the past five years by a supervisory authority or professional body
- do not have any convictions in any country in relation to the conduct of financial services business or involving fraud or dishonesty
- do not have any convictions under anti-money laundering or anti-financial terrorism legislation of any country

The promoter must also confirm that:

- it is able to pay its debts as they fall due
- it is established in an OECD member state or any other state with whom the JFSC has entered into an agreement on investment business and investment funds, and either:
 - is regulated in that state; or

- has among its principal persons relevant experience in relation to promoting, managing or advising on professional investors' or sophisticated investors' investments using similar strategies to the fund.

The promoter's written statement must be countersigned by the fund's administrator, general partner, trustee, manager or managing trustee (as the case may be) certifying that it has carried out its own due diligence on the promoter and has no reason to believe that the statement is incorrect.

Form and board composition of a Private Placement Fund

A Private Placement Fund may take the form of a Jersey company (including a protected cell company or an incorporated cell company), a partnership or a unit trust, or any equivalent form outside of Jersey.

A Private Placement Fund established as:

- a Jersey company must have at least two Jersey resident directors with appropriate experience
- a non Jersey company must have either (a) at least two Jersey resident directors with appropriate experience or (b) a Jersey company must be appointed as the fund's manager and which itself has at least two Jersey resident directors with appropriate experience
- a limited partnership, separate limited partnership or incorporated limited partnership either in Jersey or elsewhere must have at least one general partner which is either:
 - a Jersey company with at least two directors with appropriate experience; or
 - itself a limited partnership, separate limited partnership or incorporated limited partnership with at least one general partner fulfilling the requirements at (a) above
 - a unit trust either in Jersey or elsewhere must have Jersey companies as its trustee and manager (or managing trustee), each with at least two Jersey resident directors with appropriate experience.

A Private Placement Fund must appoint an administrator licensed by the JFSC, providing a minimum of registered office services and support for the fund's anti-money laundering obligations.

Private Placement Memorandum requirements

There are certain basic requirements for the contents of the fund's offering document; in summary, the document should contain all material information reasonably required by investors to enable them to make an informed judgement about the merits of investing and the levels of risk involved in doing so.

Ongoing requirements

A Private Placement Fund must deliver to the JFSC its annual accounts if the auditor's report on those accounts is qualified in any way.

Any material changes to the information originally submitted to the JFSC should be notified to the JFSC within 28 days of such change taking place, provided that any proposed change which would not meet the criteria for a Private Placement Fund will require the JFSC's prior written consent.

A Private Placement Fund must appoint a Money Laundering Reporting Officer and Money Laundering Compliance Officer (it is expected that the fund's administrator will provide these).

Appendix

Definitions of a "Professional Investor" and "Sophisticated Investor"

"Professional Investor" means:

- (a) a person whose ordinary activities involve the person acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of the person's business or who it is reasonable to expect will acquire, hold, arrange or dispose of investments (as principal or agent) for the purposes of that business;
- (b) any person who carries on investment business within the meaning of the Financial Services (Jersey) Law 1998 in relation to the Private Placement Fund;
- (c) any Eligible Employee (defined below);
- (d) any company which is wholly owned by, or a limited partnership of which all of the limited partners of which are, or a trust established for the benefit only of, one or more persons referred to in paragraph (b) or (c);
- (e) a Service Provider (defined below) in relation to the Private Placement Fund or an Associate (defined below) of such a Service Provider;
- (f) a person who:
 - (i) is an employee, director, partner, member or shareholder of a Private Placement Fund or an employee, director, partner, member or shareholder of, or consultant to a Service Provider or Associate thereof, and
 - (ii) in making the relevant subscription, purchase, exchange or acquisition would acquire Units (defined below) in the Private Placement Fund as remuneration, benefit or reward, either as such an employee, director, partner, member, shareholder or consultant or is a person who otherwise participates in a carried interest vehicle associated with the Private Placement Fund;

- (g) a company, partnership, limited partnership, separate limited partnership, incorporated limited partnership, limited liability partnership, trust, or unincorporated association, in relation to which one or both of the following requirements is met:
- (i) its property (or its property and that of its Associates) has a total market value of not less than US\$10 million (or the equivalent of that amount in another currency);
 - (ii) every shareholder of the company, every partner of the partnership, limited partnership, separate limited partnership, incorporated limited partnership or limited liability partnership, every beneficiary of the trust or every member of the association (as the case requires) would, himself or herself, be a Professional Investor in relation to the Private Placement Fund or a Sophisticated Investor (defined below);
- (h) a wholly-owned subsidiary of a company that satisfies the conditions set out in paragraph (g);
- (i) a trustee of a trust established by a Sophisticated Investor or a person who is specified in any of paragraphs (e), (g) and (h) or is an employee, director, partner, member, shareholder or consultant specified in paragraph (f)(i);
- (j) a trustee of a trust established for the benefit of:
- (i) a person who is a Sophisticated Investor or a person specified in paragraph (f)(i); or
 - (ii) any one or more persons in any of the following classes:
 - (a) the spouse of a person specified in sub-paragraph (j)(i),
 - (b) the issue of such a person,
 - (c) the dependants of such a person,
 - (iii) a person specified in sub paragraph (j)(i) and any one or more persons in any one or more of the following classes:
 - (a) his or her spouse;
 - (b) his or her issue;
 - (c) his or her dependants; or
- (k) a person who in making the subscription, purchase, exchange or acquisition is acting as or for a public sector body.

For the purposes of paragraph (f), a reference to a shareholder of a Service Provider or Associate specified in paragraph (e) is a reference to a shareholder in respect of whom the Service Provider or Associate (as the case requires) has signed a declaration that the investment is suitable for the shareholder and that the shareholder is able to bear the economic consequences of the investment, including the possibility of the loss of the entire investment.

“Sophisticated Investor” means an investor who makes a minimum initial investment or investment commitment of £250,000 (or currency equivalent) in the Private Placement Fund, whether through the initial offering or subsequent acquisition.

Related definitions

“Associate” means:

- (a) in relation to a company:
 - (i) a company that is a subsidiary or a holding body of the first-mentioned company or a subsidiary of any such holding body,
 - (ii) an individual, partnership, limited partnership, separate limited partnership, incorporated limited partnership, limited liability partnership, trust or unincorporated association that has direct or indirect control of the first-mentioned company, or
 - (iii) a company that is directly or indirectly controlled by any such individual, partnership, limited partnership, separate limited partnership, incorporated limited partnership, limited liability partnership, trust or unincorporated association;
- (b) in relation to an individual, partnership, limited partnership, separate limited partnership, incorporated limited partnership, limited liability partnership, trust or unincorporated association, a company directly or indirectly controlled by that individual, partnership, limited partnership, separate limited partnership, incorporated limited partnership, limited liability partnership, trust or unincorporated association.

“Eligible Employee” means an employee of a person who carries on investment business within the meaning of the Financial Services (Jersey) Law 1998 in relation to the Private Placement Fund and who is:

- (a) engaged in carrying on investment business in relation to the Private Placement Fund; or
- (b) who acquires Units in the Private Placement Fund by way of remuneration, benefit or reward for acting as an employee of such person and where that person is a company, any director of that company and, where that person is a partnership, any partner of that partnership or a director of a general partner of such partnership;

“Service Provider” means, in relation to a Private Placement Fund, any person in relation to the Private Placement Fund who is:

- (a) a manager, manager of a managed entity, general partner, administrator, registrar, investment manager, investment adviser or other professional advisor;

- (b) a distributor, promoter, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent or repurchase agent;

- (c) a trustee, custodian or depositary; or

- (d) a member (except a limited partner) of a partnership, including a partnership constituted under the law of a country or territory outside Jersey.

“Unit” means any material representation of the rights of participants with regard to the assets of a Private Placement Fund whether such rights are represented:

- (a) by securities issued by the Private Placement Fund;

- (b) by the entry of names of participants in a register kept in relation to the Private Placement Fund; or

- (c) by any other means.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.

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